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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,988	08/09/2000	Thomas B. Brown	MS1-565US	5702
22801	7590	07/12/2004	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			EL CHANTI, HUSSEIN A	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action

Application No.

09/635,988

Applicant(s)

BROWN ET AL.

Examiner

Hussein A El-chanti

Art Unit

2157

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-48.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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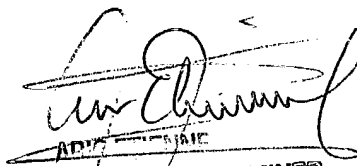
Continuation of 5. does NOT place the application in condition for allowance because: In the remarks, the applicant argues in substance that: A) Gunningberg does not teach A) sendings are performed at an application layer in accordance with an OSI model B) Gunningberg does not teach two packets sent back to back C) Gunningberg does not discuss the tolerability of the packets sent D) Gunningberg does not disclose "sending at least a prime packet" E) Gunningberg does not disclose "receiving a bandwidth calculation based upon measurements related to the pair of packets".

In response to A and B) The additional limitations were not filed in the original claims and therefore require further consideration by the examiner and therefore the additional limitations are not considered.

In response to C) Gunningberg teaches sending RPC's back-to-back and measures the response time as a function of the size (see page 416 col. 2) and therefore Gunningberg meets the scope of the claimed limitation "transmission delay between packets is intolerable".

In response to D) Gunningberg teaches sending a series of packets but the claim states "at least one priming packet" and therefore the 100 packets taught by Gunningberg meet the scope of the claimed limitation "sending at least one priming packet".

In response to E) Gunningberg teaches sending pair of packets sent back-to-back for the purpose of measuring the bandwidth of the TCP network. In fact TABLE II shows calculation of response time as the size of the packets change and therefore Gunningberg meets the scope of the claimed limitation "receiving a bandwidth calculation based upon measurements related to the pair of packets".


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